

**FOCUS AREAS OF THE 11th SESSION OF THE OPEN-ENDED WORKING GROUP ON AGEING:
Access to Justice**

Pour une présentation complète des politiques de la France, veuillez-vous référer à :
Mise en oeuvre du Plan d'action international de Madrid sur le vieillissement (PAIMV/MIAPA) et sa stratégie de mise en oeuvre régionale (RIS). Troisième cycle de revue et d'évaluation (2012-2017) : rapport national de suivi

For a full presentation of France's policies, please refer to :

Report on the French Ageing Policy. 15 Years since the Second UN World Ageing Plan (Madrid International Plan of Action on Ageing – MIPAA) Madrid 2002

Disponible, en français et en anglais, **sur le site web des Nations-Unies:**
Available on the United Nations Economic Commission for Europe (UNECE) website:

<https://www.unece.org/pau/mipaareports2017.html>

National legal framework

1. How is the access to justice by older persons guaranteed under the national legal and policy framework? What judicial and non-judicial mechanisms are in place for all older persons to complain and seek redress for denial of their rights?

Equal access to justice is a constitutional right guaranteed by the Declaration of the Rights of Man and of the Citizen (*Déclaration des droits de l'homme et du citoyen*) (article 16). A 1991 law (*loi du 10 juillet 1991 relative à l'aide à l'accès au droit*) guarantees access to appropriate judicial counselling, administrative help and general information on the inner workings of the justice system in dedicated places. It also implements a system of financial aid for justice related proceedings.

A **National Charter for the Access to Justice** (*Charte nationale de l'accès au droit*) was signed on the 21st of February 2017 by the Ministry of Justice and several national organisations in order to promote a justice system that would be closer to citizens, more efficient and more accessible. It is part of a global plan for the modernisation of the justice system, launched by the **law on the modernisation of the justice system in the 21st century** (*loi de modernisation de la Justice du XXIe siècle*) voted on the 18th of November 2016, and whose first article champions "an equal access to right and justice".

Access to justice is also a cornerstone of European legislation. **The Treaty on European Union** claims "member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law." (art 19). The **European Convention on Human Rights** guarantees the right to a fair trial, including to legal assistance (art 6). The **Fundamental Rights Agency** was created on the 15th of February 2007 to collect data on all rights listed in the **Charter of Fundamental Rights of the European Union** and ensure access to justice to all European citizens.

The French justice system has evolved to offer non-judicial mechanisms for the settlement of litigations. A 1998 **law on amicable dispute resolution** (*loi du 18 décembre 1998 relative à l'accès au droit et à la résolution amiable des conflits*) strengthened the legal aid system and encouraged mediation and arbitration. The 2016 **law on the modernisation of the justice system in the 21st century** has sought to standardise the use of judicial

mediation, which is codified by the Code of Civil Procedure (*Code de procédure civile*, title VI, art.131-1 to 131-15). It can last up to three months. The Rénadem (*Réseau national d'accès au droit et à la médiation*) is a national network promoting the use of non-judicial mechanisms for the settlement of disputes. Arbitration is ruled by article 21 of the Code of Civil Procedure. Either the judge or the complainant can decide to opt for an arbitration in order to find an amicable solution to the litigation. Since 2016, a judicial conciliator must lead arbitrations.

Availability

2. *What steps have been taken to ensure the availability of judicial and non-judicial mechanisms for older persons in urban, rural and remote areas in your country? Are there alternative dispute settlement mechanisms available?*

Equal access to justice has been one of the priorities tackled by the 2016 law on the modernisation of the justice system in the 21st century. One of its notable effects was the creation of 101 **County Councils of Access to the Law** (*Conseils Départementaux de l'Accès au Droit*), regional institutions. They provide access to judicial information, assistance for administrative and legal procedures, and they dispense free legal advice. Similar services are provided in **legal access centres** (such as « maisons la justice et du droit » and « points d'accès au droit »), where lawyers, ushers and notaries work daily. Such services are located both in the main cities and in the countryside. Free consultations are provided in **civil courts** (*tribunaux d'instance*) and **town halls**.

For people living in more remote areas, social workers employed in **municipal centres for social action** (*centres communaux d'action sociale*) can also provide administrative help. There are approximately 3 350 municipal centres in France. Alternative dispute settlement mechanisms are available in the shape of mediation and conciliation.

Ensuring access to justice for older people also means taking into account the health issues that may prevent them from leading their legal proceedings themselves. Two systems have been implemented: **mandates for future protection** and **guardianship**. The system of mandates for future protection (*mandat de protection future*) enables the person to designate an authorised representative (often a family member) to represent them in the justice system (in case of illness, disability, blindness...). It is codified by articles 487 to 494 of the Civil Code (*Code Civil*).

In case of cognitive impairment, a health specialist can examine the older person and establish a report advising a system of **guardianship** or tutelage to protect the vulnerable adult. The legal guardian (often a family member) is entrusted with managing the person's finances and access to justice. This system is codified by articles 425 to 472 of the Civil Code.

3. *What steps have been taken to ensure that all justice systems (judicial and non-judicial) are secure, affordable and physically accessible for older persons and adapted to their needs?*

Affordability is one of the key components of an accessible justice since. As their income tends to be lower than that of working people, older citizens vastly benefit from **legal aid** (*aide juridictionnelle*), which is based on income and meant to cover legal expenses (such as lawyer fees).

Older persons can also access the justice system through their insurance. Most insurers offer an optional **legal expenses insurance**. An EU directive (directive 87/344/EEC of 22 June 1987 on the coordination of laws, regulations and administrative provisions relating to legal expenses insurance) regulates their use and determines

that any contract of legal expenses insurance shall expressly recognise the right of the insured person to choose their lawyer.

4. What are the existing provisions to guarantee legal assistance for older persons?

The standard procedure does not introduce exceptions for older people; all citizens can receive assistance and help concerning administrative and legal proceedings in the County Councils of Access to the Law, municipal centres for social action, and other legal access points.

5. What are specific challenges encountered by older persons in accessing justice and remedy in your country?

The charity Droit Pluriel, which campaigns for the access to justice of disabled people, notes that the elderly and the disabled are less likely to have access to justice. According to the Ministry of Justice, over 1 770 courthouses and police stations have yet to be made accessible to wheelchair-users, blind or otherwise disabled people - implying that some older people might also be prevented from accessing them.

After the passing on the 20th of February 2019 of a law promoting an online, paper-free system for minor litigations, the *Défenseur des droits* (see below) suggested improvements to better take into account the technological exclusion it might cause, especially as older people tend not to be computer-literate¹.

6. What good practices are available in terms of ensuring equal and effective access to justice and remedy for older persons?

In 2015, the Conseil d'Etat (legal advisor of the executive branch and Supreme Court for administrative justice), the Paris Association of Lawyers (Ordre des Avocats de Paris) and the European Group of Magistrates for Mediation hosted a **symposium to discuss alternative mechanisms of termination of litigations**. The symposium underlines the importance of encouraging this amicable mode of settlement, as a quicker alternative. It also highlighted the necessity for all the actors involved in administrative justice to inform claimants of the possibility to settle disputes without appealing to a judge. The Conseil d'Etat recommended the implementation of user friendly guidelines and ethical charters to spread good practices.

A series of online platforms and websites also provide information on access to justice and procedures. Examples include DroitDirect ((<https://droitdirect.fr>) and DroitdUrgence (<https://www.droitsdurgence.org/>), who both provide information about legal remedies.

Finally, a website dedicated to the information of older people is available at the following address: <https://www.pour-les-personnes-agees.gouv.fr/>. It comprises two sections for carers curious to learn about mandates for future protection and guardianship, and how to support their older relatives.

¹ Accueil téléphonique et dématérialisation, étude menée en 2016 par le Défenseur des droits et l'Institut national de la consommation auprès de la CNAF, Pôle emploi et la Caisse nationale d'assurance maladie. According to him, 9% of the population does not have access to a computer, and 13% of the population lacks basic computer skills.

Equality and non-discrimination

7. *What are the provisions adopted to ensure effective access to justice for older persons on an equal basis with others, including age-appropriate procedures in all administrative and legal proceedings?*

The national commitment to ensuring that all administrative and judicial proceedings are available to all citizens on an equal basis translates into an anti-discrimination legislation as well as the creation of an efficient institutional environment of governance structures that take into account the needs of senior citizens. Following the 2015 Act on Adapting society to an ageing population (*loi du 28 décembre 2015 relative à l'adaptation de la société au vieillissement*), the decree of 7th September 2016 (*décret n° 2016-1206 du 7 septembre 2016 sur la création du conseil départemental de la citoyenneté et de l'autonomie (CDCA)*) inaugurates the **Departmental Council on Citizenship and Autonomy**, created by the fusion of the Departmental Committee of Pensioners and Senior Citizens and the Council of Disabled Persons. The decree of 25th October 2016 (*Décret n° 2016-1441 du 25 octobre 2016 sur la création du haut conseil de la famille de l'enfance et de l'âge*) created the **High Council on Families, Children and Senior Citizens** on a national level. These two institutions create a network on a local and national level, providing an effective institutional framework advising policy-makers.

8. *Please specify existing public policies and awareness-raising and capacity building programmes established for all justice system personnel to address the negative impacts of ageism and age discrimination in justice system.*

The *Défenseur des Droits* (Defender of Human Rights) is an independent authority with a constitutional status created by an organic law of 2011 (*loi organique du 29 mars 2011 relative au Défenseur des droits*). The *Défenseur* is nominated by the President for a six-year term, and assisted by six experts. This institution relies on a territorial network of 450 delegates, who inform, orientate and help the claimants free of charge. The *Défenseur* acts as an advisor for policy-makers. He is also in charge of ensuring that administrative and legal procedures are free of discrimination towards older people.

The Ageism Monitoring Centre (*Observatoire de l'agisme*) strives to campaign for the rights of senior citizens and to fight age-related discriminations. They both make recommendations for the improvement of the justice system.

Accountability

9. *How do you ensure justice systems function in accordance with the principles of independence and impartiality? Please specify if there is any oversight mechanism in place to address any discrimination against older persons committed by justice system professionals.*

The French system of justice guarantees to every citizen the right to appeal should they feel like they have been the victim of discrimination on the part of justice system professionals. Anyone can appeal to the **Défenseur des Droits**, who has the prerogative to appeal to any competent authority and to make comments before Courts.

Since France is a member of the European Union, older persons can also appeal to the **Court of Justice of the European Union** as the court of final appeal.